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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

10 POUYA ABDOLRASOUL, an
11 individual on behalf of himself and all
other similarly situated people,

12 | Plaintiffs,

13 |

vs.

14 MOHELA, a non-profit corporation; and DOES 1-100,

Defendants.

CASE NO. 3:15-cv-02167-BAS-NLS

**ANSWER TO COMPLAINT,
DEMAND FOR JURY**

The Hon. Cynthia Bashant

INTRODUCTION

7 1. MOHELA states that the best evidence of the TCPA is the statute
8 itself, as well as the Federal Communications Commission's interpretative
9 decisions. MOHELA specifically denies that it acted negligently, that it
10 intentionally contacted Plaintiff, that it violated the TCPA, that it engaged in any
11 "illegal actions," and that it "invad[ed] Plaintiff's privacy." Answering further,
12 MOHELA states that the allegations contained in Paragraph 1 are legal
13 conclusions, to which no response is required. To the extent a response is required,
14 MOHELA denies the allegations contained in Paragraph 1.

JURISDICTION AND VENUE

16 2. MOHELA admits in part and denies in part the allegations in
17 Paragraph 2. MOHELA admits that the Court has jurisdiction over the alleged
18 violations, but denies that any violations occurred.

19 3. MOHELA denies all allegations contained in Paragraph 3.

20 4. MOHELA admits only that it has conducted business within the State
21 of California. MOHELA states that the remaining allegations contained in
22 Paragraph 4 are legal conclusions, to which no response is required. To the extent a
23 response is required, MOHELA denies the remaining allegations contained in
24 Paragraph 4.

25 5. MOHELA denies that it engaged in any misconduct within this
26 judicial district. MOHELA is without sufficient knowledge or information to form
27 a belief as to the truth of the allegations regarding whether Plaintiff resides in the
28 City of San Diego and whether “many, if not all, of the acts and transactions giving

1 rise to this action occurred in this district.” MOHELA states that the remaining
2 allegations contained in Paragraph 5 are legal conclusions, to which no response is
3 required. To the extent a response is required, MOHELA denies the remaining
4 allegations contained in Paragraph 5.

5 **THE PARTIES**

6 6. MOHELA is without sufficient knowledge or information to form a
7 belief as to the truth of the allegation contained in Paragraph 6.

8 7. MOHELA admits the allegations contained in Paragraph 7.

9 8. MOHELA admits that it has conducted business within the State of
10 California. MOHELA admits its headquarters are in Chesterfield, Missouri.
11 MOHELA denies the remaining allegations contained in Paragraph 8.

12 9. MOHELA denies the allegations in Paragraph 9. Answering further,
13 MOHELA states that it is a public instrumentality and body politic and corporate of
14 the State of Missouri.

15 **RELEVANT FACTS**

16 10. MOHELA denies all allegations contained in Paragraph 10.

17 11. MOHELA admits that Plaintiff does not owe a debt directly to it. As
18 to Plaintiff’s allegation that he “owes no debt to any creditor associated with
19 Defendant MOHELA whatsoever,” MOHELA is without sufficient knowledge or
20 information to form a belief as to the truth of that allegation and therefore denies it.

21 12. MOHELA admits only that it placed calls to a cellular telephone
22 number allegedly owned, used, or carried by Plaintiff. Answering further,
23 MOHELA is without sufficient knowledge or information to form a belief as to the
24 truth of the remaining allegations contained in Paragraph 12 and therefore denies
25 them.

26 13. MOHELA admits only that it placed calls to a cellular telephone
27 number ending in x1030 allegedly owned, used, or carried by Plaintiff. Answering
28 further, MOHELA is without sufficient knowledge or information to form a belief

1 as to the truth of the remaining allegations contained in Paragraph 13 and therefore
2 denies them.

3 14. MOHELA states that the allegations contained in Paragraph 14 are
4 legal conclusions, to which no response is required. To the extent a response is
5 required, MOHELA denies the allegations contained in Paragraph 14.

6 15. MOHELA admits, based on its investigation to date, that Plaintiff did
7 not expressly consent to receive telephone calls. Answering further, MOHELA is
8 without sufficient knowledge or information to form a belief as to the truth of the
9 remaining allegations contained in Paragraph 15 and therefore denies them.

10 16. MOHELA states that the allegations contained in Paragraph 16 are
11 legal conclusions, to which no response is required. To the extent a response is
12 required, MOHELA denies the allegations contained in Paragraph 16.

13 17. MOHELA states that the allegations contained in Paragraph 17 are
14 legal conclusions, to which no response is required. To the extent a response is
15 required, MOHELA denies the allegations contained in Paragraph 17.

16 18. MOHELA is without sufficient knowledge or information to form a
17 belief as to the truth of the allegations contained in Paragraph 18 and therefore
18 denies them.

19 19. MOHELA admits the allegations contained in Paragraph 19.

20 20. MOHELA admits, based on its investigation to date, that Plaintiff did
21 not expressly consent to receive telephone calls. Answering further, MOHELA is
22 without sufficient knowledge or information to form a belief as to the truth of the
23 remaining allegations contained in Paragraph 20 and therefore denies them.

24 21. MOHELA states that the allegations contained in Paragraph 21 are
25 legal conclusions, to which no response is required. To the extent a response is
26 required, MOHELA denies the allegations contained in Paragraph 21.

27 22. MOHELA admits only that the July 24, 2015 letter was sent by
28 Plaintiff's counsel and received by MOHELA. MOHELA states that the best

1 evidence of the contents of the letter is the letter itself. Answering further,
2 MOHELA denies all allegations that are inconsistent with the terms of the letter.
3 MOHELA is without sufficient knowledge or information to form a belief as to the
4 truth of the remaining allegations contained in Paragraph 22 and therefore denies
5 them.

6 23. MOHELA states that the best evidence of the contents of the July 24,
7 2015 letter is the letter itself. Answering further, MOHELA denies all allegations
8 that are inconsistent with the terms of the letter.

9 24. MOHELA admits that the July 24, 2015 letter was sent by Plaintiff's
10 counsel and received by MOHELA. MOHELA further admits a copy of the letter
11 is attached as Exhibit 1. MOHELA states that the best evidence of the contents of
12 the letter is the letter itself. Answering further, MOHELA denies all allegations
13 that are inconsistent with the terms of the letter.

14 25. MOHELA admits that it authored and sent the August 3, 2015 letter.
15 MOHELA further admits a copy of the letter is attached as Exhibit 2. MOHELA
16 states that the best evidence of the contents of the letter is the letter itself.
17 Answering further, MOHELA denies all allegations that are inconsistent with the
18 terms of the letter.

19 **CLASS ACTION ALLEGATIONS**

20 26. MOHELA denies that Plaintiff has any claim for relief, denies that
21 class certification of this case is appropriate, and further denies all remaining
22 allegations contained in Paragraph 26.

23 27. MOHELA denies that Plaintiff has any claim for relief, denies that
24 class certification of this case is appropriate, and further denies all remaining
25 allegations contained in Paragraph 27.

26 28. MOHELA denies that Plaintiff has any claim for relief, denies that
27 class certification of this case is appropriate, and further denies all remaining
28 allegations contained in Paragraph 28.

1 29. MOHELA specifically denies that the number of putative class
2 members exceeds a thousand members. Answering further, MOHELA denies that
3 Plaintiff has any claim for relief, denies that class certification of this case is
4 appropriate, and further denies all remaining allegations contained in Paragraph 29.

5 30. MOHELA denies that Plaintiff has any claim for relief, denies that
6 class certification of this case is appropriate, and further denies all remaining
7 allegations contained in Paragraph 30.

8 31. MOHELA denies that Plaintiff has any claim for relief, denies that
9 class certification of this case is appropriate, and further denies all remaining
10 allegations contained in Paragraph 31.

11 32. MOHELA denies that Plaintiff has any claim for relief, denies that
12 class certification of this case is appropriate, and further denies all remaining
13 allegations contained in Paragraph 32.

14 33. MOHELA denies that Plaintiff has any claim for relief, denies that
15 class certification of this case is appropriate, and further denies all remaining
16 allegations contained in Paragraph 33.

17 34. MOHELA denies that Plaintiff has any claim for relief, denies that
18 class certification of this case is appropriate, and further denies all remaining
19 allegations contained in Paragraph 34.

20 35. MOHELA specifically denies that there is a class or that a putative
21 class could be identified through MOHELA records. Answering further, MOHELA
22 denies that Plaintiff has any claim for relief, denies that class certification of this
23 case is appropriate, and further denies all remaining allegations contained in
24 Paragraph 35.

25 36. MOHELA denies that Plaintiff has any claim for relief, denies that
26 class certification of this case is appropriate, and further denies all remaining
27 allegations contained in Paragraph 36.

28 37. MOHELA denies that Plaintiff has any claim for relief, denies that

1 class certification of this case is appropriate, and further denies all remaining
2 allegations contained in Paragraph 37.

3 38. MOHELA specifically denies that Plaintiff's claims are typical of the
4 alleged class or that Plaintiff would be an adequate representative of the alleged
5 class. Answering further, MOHELA denies that Plaintiff has any claim for relief,
6 denies that class certification of this case is appropriate, and further denies all
7 remaining allegations contained in Paragraph 38.

8 39. MOHELA denies the allegations of Paragraph 39.

9 40. MOHELA specifically denies that it violated the law, engaged in any
10 illegal conduct, caused any wrongs, and that any individual was irreparably harmed.
11 Answering further, MOHELA denies that Plaintiff has any claim for relief, denies
12 that class certification of this case is appropriate, and further denies all remaining
13 allegations contained in Paragraph 40.

14 41. MOHELA is without sufficient knowledge or information to form a
15 belief as to the truth of the allegations contained in Paragraph 41 and therefore
16 denies them.

17 42. MOHELA denies the allegations contained in Paragraph 42.

18 43. MOHELA denies the allegations contained in Paragraph 43.

19 44. MOHELA denies that class certification of this case is appropriate, and
20 further denies all remaining allegations contained in Paragraph 44.

21 45. MOHELA denies the allegations contained in Paragraph 45.

22 46. MOHELA denies the allegations contained in Paragraph 46.

23 **FIRST CAUSE OF ACTION**

24 **Negligent Violations of the TCPA**

25 47. Paragraph 47 of Plaintiff's Complaint does not contain any allegations
26 which have not already been admitted or denied. MOHELA re-alleges and
27 incorporates its answers to Paragraphs 1 through 46 of the Complaint as if fully set
28 forth herein.

1 48. MOHELA denies the allegations contained in Paragraph 48.
2 49. MOHELA denies the allegations contained in Paragraph 49.
3 50. MOHELA denies the allegations contained in Paragraph 50.

4 **SECOND CAUSE OF ACTION**

5 **Knowing and/or Willful Violations of the TCPA**

6 51. Paragraph 51 of Plaintiff's Complaint does not contain any allegations
7 which have not already been admitted or denied. MOHELA re-alleges and
8 incorporates its answers to Paragraphs 1 through 50 of the Complaint as if fully set
9 forth herein.

10 52. MOHELA denies the allegations contained in Paragraph 52.
11 53. MOHELA denies the allegations contained in Paragraph 53.
12 54. MOHELA denies the allegations contained in Paragraph 54.

13 **PRAYER FOR RELIEF**

14 FURTHER ANSWERING, MOHELA denies that Plaintiff is entitled to any
15 relief whatsoever and therefore denies that any relief should be awarded pursuant to
16 Plaintiff's *ad damnum* clause (or "Wherefore" clause) at the end of the Complaint.
17 Specifically, MOHELA denies Plaintiff's entitlement to all relief requested under
18 sub-paragraphs (1) through (10) of Plaintiff's prayer for relief. MOHELA further
19 denies that Plaintiff is entitled to attorneys' fees under the TCPA, which does not
20 contain an attorneys' fees provision.

21 55. MOHELA admits that Plaintiff is entitled to demand a trial by jury.
22 MOHELA denies that Plaintiff's Complaint raises any triable issue.

23 **AFFIRMATIVE DEFENSES**

24 **FIRST AFFIRMATIVE DEFENSE**

25 56. MOHELA alleges that Plaintiff's Complaint fails to state a claim upon
26 which relief can be granted.

27 **SECOND AFFIRMATIVE DEFENSE**

28 57. MOHELA alleges that Plaintiff and the putative class have not suffered

1 | any damages as a result of MOHELA's alleged conduct.

THIRD AFFIRMATIVE DEFENSE

3 58. MOHELA alleges that Plaintiff cannot prevail on his claims against
4 MOHELA because MOHELA acted in good faith conformity and in reliance upon
5 all applicable laws, rules, and regulations, and was further privileged in its actions.

FOURTH AFFIRMATIVE DEFENSE

7 59. To the extent the TCPA applies to MOHELA's alleged actions (which
8 MOHELA specifically denies) and there was a violation of the TCPA (which
9 MOHELA specifically denies), MOHELA is exempted from liability because the
10 alleged TCPA violations were unintentional and resulted from a bona fide error,
11 despite the fact that MOHELA maintains procedures reasonably adapted to avoid
12 any such violations.

FIFTH AFFIRMATIVE DEFENSE

14 60. Plaintiff's request for reasonable attorneys' fees is improper and should
15 be stricken as the TCPA does not provide for the recovery of attorneys' fees.

SIXTH AFFIRMATIVE DEFENSE

17 61. MOHELA alleges that Plaintiff lacks standing to pursue his claims
18 because he did not suffer an injury. *See Spokeo, Inc. v. Robins*, 135 S.Ct. 1892
19 (2015) (granting certiorari).

SEVENTH AFFIRMATIVE DEFENSE

21 62. MOHELA alleges that Plaintiff's claims are barred because MOHELA
22 has immunity pursuant to the Eleventh Amendment to the United States
23 Constitution.

EIGHTH AFFIRMATIVE DEFENSE

25 63. MOHELA alleges that Plaintiff's claims are barred by the federal
26 contractor defense because MOHELA, as a federal contractor, is protected from
27 private damage suits under the TCPA pursuant to the doctrine of derivative
28 sovereign immunity and further under the government contractor defense as

1 enunciated by the United States Supreme Court in *Boyle v. United Technologies*
2 *Corp.*, 487 U.S. 500 (1988).

3 **NINTH AFFIRMATIVE DEFENSE**

4 64. MOHELA alleges that Plaintiff's claims regarding an alleged putative
5 class fail because the numerosity requirement is not met.

6 **TENTH AFFIRMATIVE DEFENSE**

7 65. MOHELA alleges that Plaintiff's claims regarding an alleged putative
8 class fail because the typicality requirement is not met.

9 **ELEVENTH AFFIRMATIVE DEFENSE**

10 66. MOHELA states that its investigation of this matter is ongoing, and
11 MOHELA hereby reserves the right to state additional defenses and affirmative
12 defenses as applicable to the claims alleged herein.

13 WHEREFORE, having fully answered, MOHELA respectfully requests that
14 the Court grant judgment in its favor, dismiss Plaintiff's Complaint with prejudice,
15 award MOHELA its costs, and grant any further relief the Court deems proper.

16

17 DATED: November 9, 2015

THOMPSON COBURN LLP

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By: *s/ Helen B. Kim*

HELEN B. KIM

Attorneys for Defendant HIGHER
EDUCATION LOAN AUTHORITY OF
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PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 At the time of service, I was over 18 years of age and **not a party to this**
4 **action.** I am employed in the County of Los Angeles, State of California. My
business address is 2029 Century Park East, Suite 1900, Los Angeles, CA 90067.

5 On November 9, 2015, I served true copies of the following document(s)
6 described as **ANSWER TO COMPLAINT, DEMAND FOR JURY TRIAL** on
the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

8 **BY CM/ECF NOTICE OF ELECTRONIC FILING:** I electronically filed
the document(s) with the Clerk of the Court by using the CM/ECF system.
9 Participants in the case who are registered CM/ECF users will be served by the
CM/ECF system. Participants in the case who are not registered CM/ECF users will
10 be served by mail or by other means permitted by the court rules.

11 I declare under penalty of perjury under the laws of the United States of
12 America that the foregoing is true and correct and that I am employed in the office
of a member of the bar of this Court at whose direction the service was made.

13 | Executed on November 9, 2015, at Los Angeles, California.

Michelle Wessman
Michelle Wessman

SERVICE LIST
Pouya Abdolrasoul v. MOHELA
3:15-cv-02167-BAS-NLS

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